

WETLANDS COUNCIL

MINUTES

June 22, 2004

The Wetlands Council met on Tuesday, June 22, 2004 at the Department of Environmental Services, 29 Hazen Dr., Concord, NH

Attendees: Brian K. Fowler, Chairman; Thomas G. Chrisenton, William M. Dannehy, Camilla Lockwood, Lawrence E. Morse, Ben Frost, William Ingham Jr., Russ St. Pierre, and Thomas Sloan

Absentees: John S. Cobb, Glenn Normandeau, Sharon Champagne and John St.C. White

The meeting was called to order by Chairman Brian Fowler at 9:05 a.m.

Chairman Fowler introduced Russ St. Pierre, Commissioner Carol Murray's designee from the Department of Transportation. Mr. St. Pierre is replacing Bill Roy, who has retired from state service. Also introduced was Ben Frost, Director MaryAnn Manoogian's designee from the Office of Energy and Planning. Mr. Frost is replacing Ted Diers, whose position with the Office of Energy and Planning was transferred to the Department of Environmental Services.

1. Approval of Minutes of February 24, 2004 Meeting

A motion was made by Mr. Dannehy and seconded by Ms. Lockwood to accept the minutes of February 24, 2004 as presented. It was unanimously voted with Mr. Frost abstaining.

- Chairman Fowler advised the councilors that the Annual Statement of Financial Interest forms which were sent in the pre-meeting packets should be filed with the Secretary of State by July 1, 2004.

2. Status of Appeals

Michael Sclafani, Appeals Clerk, distributed an Appeals Status Report and reviewed it with council members.

- Docket No. 02-16 WtC - Donald S. Thompson: WB #2002-01019
A stay remains in effect. Mr. Sclafani expects to receive an update on settlement negotiations by the next council meeting.
- Docket No. 03-02 WtC – Philip and Judith Mills: WB #2002-00922
A pre-hearing conference was held on April 13, 2004 and an appeal hearing was scheduled for June 22, 2004. On April 16, 2004 a pre-hearing order was issued. On May 10, 2004, the appellants filed a motion to continue the hearing. A Decision & Order was issued on May 18 granting appellants' motion to continue and a pre-hearing conference will reconvene on June 22, 2004.

- Docket No. 03-03 WtC - Joseph J. Smith: WB #2001-00787
This case has been appealed to the Rockingham County Superior Court.
- Docket No. 03-04 WtC - Aqua Terrace Condominium Assn: WB #2002-00866
On March 4, 2004 a Decision & Order to deny the appeal was issued. A request for reconsideration has not been filed.
- Docket No. 03-08 WtC - Marianna and Gene Cayten: WB #2002-01912
On March 4, 2004 a Decision & Order to deny the appeal was issued. The appellant filed a Motion for Reconsideration on March 24, 2004. On March 29, 2004 DES filed a Motion to Extend Time to File a Response to Appellant's Motion for Reconsideration, which was granted by Decision & Order issued on April 6, 2004. DES' Response to Motion for Reconsideration was filed on April 5, 2004. On May 19, 2004, a Decision & Order to deny appellant's Motion for Reconsideration was issued.
- Docket No. 03-11 WtC - Town of Barrington
A stay remains in effect.
- Docket No. 03-13 WtC – Town of Salem Conservation Commission: WB #2002-02397
On March 4, 2004 a Decision & Order to deny this appeal was issued. The appellant did not file for reconsideration.
- Docket No. 03-16 WtC - Herbert and Joan Sauve: WB #2003-01620
This case has been appealed to the Carroll County Superior Court.
- Docket No. 03-17 WtC - Roy and Myra Gordon: WB #2002-02335
On February 26, 2004 Attorney Kension on behalf of the appellants file a Motion to Continue Pre-Hearing Conference, which was granted by Decision & Order on March 1, 2004. A pre-hearing conference was held on April 13, 2004. Chairman Fowler granted applicants' December 10, 2003 Motion to Dismiss Issues #1 & #2; denied CLF's February 10, 2004 Motion to Intervene; and extended the appellants' presentation time to 45 minutes at the appeal hearing presently scheduled for August 10, 2004. On April 20, 2004 a written Decision & Order and Pre-hearing Order were issued. On April 30, 2004 Attorney Kuster, on behalf of CLF, filed a Motion for Reconsideration of the April 20, 2004 Order denying CLF intervenor status. Also on April 30, 2004 Attorney McGrath on behalf of the applicants filed an objection to CLF's Motion for Reconsideration. On May 8, 2004, a Decision & Order was issued denying CLF's Motion for Reconsideration. On June 16, 2004 Attorney McGrath on behalf of applicants filed a Motion to Admit Other Wetlands Council's Decisions.

Discussion ensued on applicants' Motion to Admit Other Wetlands Council's Decisions. Since all council decisions are a matter of public record, it was determined that it would not be constructive to grant or deny applicants' motion.

A motion was made by Mr. Dannehy to neither grant nor deny applicants' Motion to Admit Other Wetlands Council's Decisions. Mr. Ingham seconded the motion and it was unanimously voted with Mr. Morse abstaining.

- Docket No. 03-21 WtC - Lee Maserian: WB #2003-1143
A pre-hearing conference was held on April 13, 2004 and an appeal hearing was scheduled for June 8, 2004. Pre-hearing memoranda and responses were filed by appellant and DES. On May 19, 2004 the appellant filed an assented-to Motion to Continue the appeal hearing and a Decision & Order was issued granting the motion. A pre-hearing conference will reconvene on June 22, 2004 at 1:30 p.m.
- Docket No. 04-03 WtC - Charles and Brenda Kalil: WB #2003-01694
On February 25, 2004 a Decision & Order was issued declining acceptance of the appeal. Appellants filed a Motion for Reconsideration on March 9, 2004. On March 11, 2004, DES filed a Motion to Extend Time for Filing a Response. The response time was extended to April 9, 2004 by Decision & Order dated March 16, 2004. On May 19, 2004, a Decision & Order was issued to deny appellants' Motion for Reconsideration.
- Docket No. 04-07 WtC - Christopher Krochina: WB #2003-00183
On March 22, 2004 a Notice of Appeal was timely filed. This is an appeal of a wetlands permit issued to Paul and Elaine Taylor to restore shoreline to original conditions at 9 Evergreen Extension in Meredith. On April 12, 2004 Attorney James Kerouac filed an appearance on behalf of the applicants along with a Reply and Motion to Dismiss. Appellant filed an Objection to Applicant's Motion to Dismiss on May 11, 2004.

Mr. Ingham made a motion to accept the appeal. Mr. Morse seconded the motion and it was unanimously voted.

A pre-hearing conference will be scheduled at which time Chairman Fowler will rule on the motion to dismiss.

- Docket No. 04-08 WtC - Greenland Conservation Com.: WB #2002-01268
On March 30, 2004 a Notice of Appeal was timely filed. This is an appeal of a wetlands permit issued to Endicott General Partnership in conjunction with development of a 79-lot subdivision in Greenland. Appearances have been filed by Attorney Malcolm McNeill on behalf applicant Endicott General Partnership and Attorney Jennifer Patterson on behalf of DES.

* Councilor Lawrence Morse stepped away from the table and abstained from discussion and vote on this appeal

Ms. Lockwood made a motion to accept the appeal and Mr. Ingham seconded the motion. It was unanimously voted with Mr. Morse abstaining.

- Docket No. 04-09 WtC - Conservation Law Foundation: WB #2002-01268
On April 2, 2004 a Notice of Appeal was timely filed. This is an appeal of a wetlands permit issued to Endicott General Partnership in conjunction with development of a 79-lot subdivision in Greenland. Appearances have been filed by Attorney Malcolm McNeill on behalf of applicant Endicott General Partnership and Attorney Jennifer Patterson on behalf of DES. On April 15, 2004 applicant filed a Motion to Dismiss and on April 20, 2004 appellant filed an Objection to Applicant's Motion to Dismiss.
- Councilor Lawrence Morse was not seated at the council table and abstained from discussion and vote on this appeal.

Ms. Lockwood made a motion to accept the appeal. Mr. Ingham seconded the motion and it was unanimously voted with Mr. Morse abstaining.

Chairman Fowler will track Docket Nos. 04-08 and 04-09 together and set up a joint pre-hearing conference. A decision will be made on applicant's Motion to Dismiss at the pre-hearing conference.

- Docket No. 04-11 WtC - Jeannette and Lauren Boss: WB #2001-00982
A Notice of Appeal was timely filed on May 4, 2004. This is an appeal of Administrative Order No. AO WD 03-18 requiring removal of a boat canopy on property located on Arlington Pond in Salem, NH.

Mr. Ingham made a motion to accept the appeal. Ms. Lockwood seconded the motion and it was unanimously voted.

- Docket No. 04-13 WtC - Mark E. Young: WB #2003-02680
A Notice of Appeal was timely filed on May 5, 2004. This is an appeal of the denial of a permit to fill 2,000 square feet of wetlands on property located on Blueberry Hill Road in Meredith, NH.

Mr. Ingham made a motion to accept the appeal. Ms. Lockwood seconded the motion and it was unanimously voted.

3. Wetlands Bureau Update

Collis Adams, Wetlands Bureau Administrator, reported on the development of the in-lieu fee program. This program is a component of the wetlands mitigation initiative and addresses those instances where there are viable projects but no onsite mitigation opportunities. A work group has been established and is at the point of drafting rules, which should be available to the council this summer. The goal is to introduce legislation in the upcoming session. Some of the significant issues which are being addressed by the work group include (1) development of threshold standards to be met before looking at the in-lieu fee option; (2) creation of a formula to determine fee assessment; and (3) determination of criteria for disbursements from the in-lieu fee fund.

4. **Old Business**

There is no old business to come before the Council.

5. **Other Business**

The following resolutions were passed in recognition of council members Bill Roy and Ted Diers:

Upon motion made by Councilor Ingham, seconded by Councilor Chrisenton and unanimously voted, the following resolutions were adopted:

No. 1

WHEREAS, Bill Roy was appointed designee to the Wetlands Board (which in 1996 became the Wetlands Council) by the Commissioner of the Department of Transportation effective January 1, 1993; and

WHEREAS, Bill Roy is retiring from the Department of Transportation and will no longer be on the Wetlands Council; it is therefore

RESOLVED, that the Wetlands Council expresses its thanks to Bill Roy for his many years of dedicated service and his contributions to the Wetlands Board and the Wetlands Council, and extends to Mr. Roy its best wishes for a long, healthy and fulfilling retirement.

No. 2

WHEREAS, Ted Diers was appointed designee to the Wetlands Council by the Director of the Office of State Planning (now the Office of Energy and Planning) as of July 28, 2000; and

WHEREAS, Ted Diers' position as Program Specialist with the NH Coastal Program of the Office of Energy and Planning has been transferred to the Department of Environmental Services and Mr. Diers will no longer be on the Wetlands Council; it is therefore

RESOLVED, that the Wetlands Council expresses its thanks to Ted Diers for his years of energy and commitment to the needs and purposes of the Wetland Council and wishes him the best in his position with DES.

6. **Next Meeting**

The next meeting is scheduled for August 10, 2004. There will not be a meeting in July but it is likely that meetings will be held on both September 14 and September 28, 2004.

7. **Adjournment**

Mr. Dannehy made a motion to adjourn. Ms. Lockwood seconded the motion and it was unanimously voted.

The meeting adjourned at approximately 10:15 a.m.